

AMENDED IN SENATE JANUARY 7, 2004

SENATE BILL

No. 50

Introduced by Senator Sher

January 9, 2003

~~An act relating to drinking water.~~ *An act to amend Section 25214.10 of the Health and Safety Code, and to amend Sections 42463, 42464, 42465.2, 42465.3, 42475.2, 42476, 42476.5, 42476.6, 42477, and 42478 of the Public Resources Code, relating to solid waste.*

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Sher. ~~Bottled water regulatory program~~ *Solid waste: hazardous electronic waste.*

The Electronic Waste Recycling Act of 2003 makes it unlawful to sell, on or after July 1, 2004, a covered electronic device, as defined, in this state to a consumer, as defined, unless the California Integrated Waste Management Board or the Department of Toxic Substances Control determines that the manufacturer of that device is in compliance with the act. The act requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. The act requires a manufacturer, on or before April 1, 2004, to inform the retailer if a covered electronic device is subject to the waste recycling fee.

This bill would revise the act to, among other things, redefine "covered electronic device," allow the board to reduce or eliminate the covered electronic waste recycling fee under certain conditions, prohibit the payment for covered electronic waste exported out of the state in certain circumstances, and revise provisions for the exportation of covered electronic waste. This bill would require the manufacturer to

inform the retailer annually as to whether a waste recycling fee is required.

The bill would also make technical changes to the act.

Because the act is incorporated into the hazardous waste control laws, a violation of which is a crime, the bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, commonly referred to as the California Safe Drinking Water Act, is administered by the State Department of Health Services and, among other things, requires the department to establish recommended public health levels for contaminants in drinking water. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the licensure and regulation by the department of specified persons engaged in certain activities relating to bottled water.~~

~~This bill would provide that it is the intent of the Legislature to enact legislation containing a comprehensive statutory framework that would ensure that provisions similar to those in the California Safe Drinking Water Act apply to bottled water and vended water products including, but not limited to, provisions relating to the preparation of annual consumer confidence reports, the provision of annual inspections, and the assessment of annual fees to fund a bottled water regulatory program administered by the department.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. —(a) The Legislature finds and declares all of the~~
- 2 *SECTION 1. Section 25214.10 of the Health and Safety Code*
- 3 *is amended to read:*
- 4 25214.10. (a) For purposes of this section “electronic
- 5 device” has the same meaning as a “covered electronic ~~device~~”;
- 6 *device,” as defined in subdivision (g) of Section 42463 of Public*
- 7 *Resources Code.*



(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision ~~(a)~~ (b) shall take effect January 1, 2007, or on or after the date the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of ~~any~~ *an* electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

SEC. 2. Section 42463 of the Public Resources Code is amended to read:

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Account” means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) “Authorized collector” means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) ~~Any~~ An entity that collects, handles, consolidates, and transports covered electronic devices and has filed a notification with the department pursuant to Article 7 (commencing with Section 66273.80) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(c) “Board” means the California Integrated Waste Management Board.

(d) (1) “Consumer” means a purchaser or owner of a covered electronic device. “Consumer” also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(2) (A) “Consumer” does not include a manufacturer who purchases specialty or medical electronic equipment that is a covered electronic device.

(B) For purposes of this paragraph, “medical electronic equipment” includes, but is not limited to, radiotherapy equipment, cardiology equipment, dialysis equipment, pulmonary ventilators, nuclear medicine equipment, laboratory equipment for in-vitro diagnosis, analyzers and freezers.

(C) For purposes of this paragraph “specialty electronic equipment” includes, but is not limited to, smoke detectors, heating regulators, and thermostats.

(e) “Department” means the Department of Toxic Substances Control.

(f) (1) “Covered electronic device” means a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally ~~and which the department determines, when discarded or disposed, would be a hazardous~~

1 ~~waste pursuant to Chapter 6.5 (commencing with Section 25100)~~
2 ~~of Division 20 of the Health and Safety Code.~~

3 (2) “Covered electronic device” does not include an
4 *automobile or any part of the automobile assembled by or for the*
5 *automobile manufacturer or franchised dealer including*
6 *replacement parts for use in an automobile*, or a large piece of
7 commercial or industrial equipment, including, but not limited to,
8 commercial medical equipment, that contains a cathode ray tube,
9 cathode ray tube device, flat panel screen, or other similar video
10 display device that is contained within, and is not separate from,
11 the larger piece of industrial or commercial equipment.

12 (g) “Covered electronic waste” or “covered e-waste” means
13 a covered electronic device that is discarded or disposed.

14 (h) “Covered electronic waste recycling fee” or “covered
15 e-waste recycling fee” means the fee imposed pursuant to Article
16 3 (commencing with Section 42464).

17 (i) “Covered electronic waste recycler” or “covered e-waste
18 recycler” means any of the following:

19 (1) A person who engages in the manual or mechanical
20 separation of covered electronic devices to recover components
21 and commodities contained therein for the purpose of reuse or
22 recycling.

23 (2) A person who changes the physical or chemical
24 composition of a covered electronic device, in accordance with the
25 requirements of Chapter 6.5 (commencing with Section 25100) of
26 Division 20 of the Health and Safety Code and the regulations
27 adopted pursuant to that chapter, by deconstructing, size
28 reduction, crushing, cutting, sawing, compacting, shredding, or
29 refining for purposes of segregating components, for purposes of
30 recovering or recycling those components, and who arranges for
31 the transport of those components to an end user.

32 (3) A manufacturer who meets any conditions established by
33 this chapter and Chapter 6.5 (commencing with Section 25100) of
34 Division 20 of the Health and Safety Code for the collection or
35 recycling of covered electronic waste.

36 (j) “Electronic waste recovery payment” means an amount
37 established and paid by the board pursuant to Section 42477.

38 (k) “Electronic waste recycling payment” means a payment
39 made by the board to an authorized collector of covered electronic
40 waste pursuant to Section 42477.

(l) “Electronic waste recycling payment” means an amount established and paid by the board pursuant to Section 42478.

(m) “Hazardous material” has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) “Manufacturer” means any of the following:

(A) A person who manufactures a covered electronic device sold in this state.

(B) A person who sells a covered electronic device in this state under a person’s brand name.

(o) “Retailer” means a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device. “Retailer” includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(p) (1) “Sell” or “sale” means any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (n), “distributor” means a person who sells a covered electronic device to a retailer.

SEC. 3. Section 42464 of the Public Resources Code is amended to read:

42464. (a) ~~On~~ *Except as specified in subdivision (f), on* and after July 1, 2004, a covered electronic waste recycling fee is hereby imposed upon the first sale in the state of a covered electronic device to a consumer by a retailer.

(b) A retailer that sells a covered electronic device to a consumer shall collect the fee imposed under subdivision (a) for each covered electronic device sold by the retailer in the following amounts:

(1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(c) The electronic waste recycling fee collected pursuant to this section shall be transmitted to the board in accordance with a schedule and procedure that the board shall establish pursuant to Sections 42475 and 42475.2. The covered electronic waste recycling fees shall be deposited in the account pursuant to Section 42476.

(d) A retailer selling a covered electronic device may retain 3 percent of the covered electronic waste recycling fee as reimbursement for any costs associated with the collection of the fee.

(e) On and after July 1, 2005, and at least once every two years thereafter, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. The board shall base any adjustment of the covered electronic waste recycling fee on the both of following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of 100 percent of the covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

(f) (1) The board may reduce or eliminate the covered electronic waste recycling fee on a device if the manufacturer of that device demonstrates to the satisfaction of the department that the device contains no toxic materials.

(2) A determination that a device contains no toxic materials does not obligate the board to refund electronic waste recycling fees collected prior to that determination, and does not relieve a retailer from paying an electronic waste recycling fee on a device sold prior to that determination.

1 *SEC. 4. Section 42465.2 of the Public Resources Code is*
2 *amended to read:*

3 42465.2. (a) On or before July 1, 2005, and at least once
4 annually thereafter as determined by the board, each manufacturer
5 of a covered electronic device ~~who sells those devices~~ *sold* in this
6 state shall do all of the following:

7 (1) Submit to the board a report that includes all of the
8 following information:

9 (A) An estimate of the number of covered electronic devices
10 sold by the manufacturer in the state during the previous year.

11 (B) A baseline or set of baselines that show the total estimated
12 amounts of mercury, cadmium, lead, hexavalent chromium,
13 PBDE's, and PBB's used in covered electronic devices
14 manufactured by the manufacturer in that year and the reduction
15 in the use of those hazardous materials from the previous year. *The*
16 *department may specify a minimum threshold for specified*
17 *materials requiring reporting.*

18 (C) A baseline or set of baselines that show the total estimated
19 amount of recycled materials contained in covered electronic
20 devices sold by the manufacturer in that year and the increase in
21 the use of those recyclable materials from the previous year.

22 (D) A baseline or a set of baselines that describe any efforts to
23 design covered electronic devices for recycling and goals and
24 plans for further increasing design for recycling.

25 (2) Make information available to consumers, that describes
26 where and how to return, recycle, and dispose of the covered
27 electronic device and opportunities and locations for the collection
28 or return of the device, through the use of a toll-free telephone
29 number, Internet Web site, information labeled on the device,
30 information included in the packaging, or information
31 accompanying the sale of covered electronic device.

32 (b) Any information submitted to the board pursuant to
33 subdivision (a) that is proprietary in nature or a trade secret shall
34 be subject to protection under state laws and regulations governing
35 that information.

36 *SEC. 5. Section 42465.3 of the Public Resources Code is*
37 *amended to read:*

38 42465.3. On or before April 1, 2004, *and annually thereafter,*
39 a manufacturer shall inform the retailer if a covered electronic

1 device sold by that manufacturer is subject to the covered
2 electronic waste recycling fee established pursuant to this chapter.

3 *SEC. 6. Section 42475.2 of the Public Resources Code is*
4 *amended to read:*

5 42475.2. (a) The board and the department may adopt
6 regulations to implement this chapter as emergency regulations.

7 (b) The emergency regulations adopted pursuant to this chapter
8 shall be adopted by the board and the department in accordance
9 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
10 Division 3 of Title 2 of the Government Code, and for the purposes
11 of that chapter, including Section 11349.6 of the Government
12 Code, the adoption of these regulations is an emergency and shall
13 be considered by the Office of Administrative Law as necessary
14 for the immediate preservation of the public peace, health, and
15 safety, and general welfare. Notwithstanding Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code, any emergency regulations adopted by
18 the *board and the* department pursuant to this section shall be filed
19 with, but not be repealed by, the Office of Administrative Law and
20 shall remain in effect for a period of two years or until revised by
21 the department or the board, whichever occurs sooner.

22 *SEC. 7. Section 42476 of the Public Resources Code is*
23 *amended to read:*

24 42476. (a) The board and the department shall deposit all
25 fees or fines collected under this chapter into the Electronic Waste
26 Recovery and Recycling Account, which is hereby created in the
27 Integrated Waste Management Fund. The funds in the Electronic
28 Waste Recovery and Recycling Account may be expended by the
29 board and department, upon appropriation by the Legislature, for
30 the following purposes:

31 (1) To make electronic waste recovery payments to an
32 authorized collector of covered electronic waste pursuant to
33 Section 42479.

34 (2) To make electronic waste recycling payments to covered
35 electronic waste recyclers of covered electronic waste pursuant to
36 Section 42479.

37 (3) To provide for costs of the board and the department to
38 administer this chapter.

39 (4) To provide funding to the department to implement and
40 enforce Chapter 6.5 (commencing with Section 25100) of



1 Division 20 of the Health and Safety Code, as that chapter relates
2 to covered electronic devices, and any regulations adopted by the
3 department pursuant to that chapter.

4 (b) Notwithstanding Section 16475 of the Government Code,
5 any interest earned upon funds in the Electronic Waste Recovery
6 and Recycling Account shall be deposited in that account for
7 expenditure pursuant to this chapter.

8 (c) Not more than 1 percent of the funds annually deposited in
9 the Electronic Waste Recovery and Recycling Account shall be
10 expended for the purposes of establishing the public information
11 program to educate the public in the hazards of improper covered
12 electronic device storage and disposal and on the opportunities to
13 recycle covered electronic devices.

14 (d) The board may not provide any payment for covered
15 electronic devices unless the materials will be handled in
16 compliance with all statutes and regulations regarding the export
17 of hazardous wastes. No payment may be made for covered
18 electronic devices exported to any country where the export
19 import of hazardous waste is prohibited.

20 (e) The board may not provide any payment for covered
21 electronic waste unless the materials are handled in compliance
22 with all statutes and regulations regarding the export of hazardous
23 wastes, including, but not limited to, Section 42476.5.

24 (f) *The board may not provide payment for covered electronic*
25 *waste exported out of state unless it can be demonstrated that the*
26 *materials are destined for reuse or recycling and managed in*
27 *compliance with all statutes and regulations regarding the*
28 *handling and export of hazardous wastes.*

29 SEC. 8. *Section 42476.5 of the Public Resources Code is*
30 *amended to read:*

31 42476.5. Except as provided in Section 42476.6, any person
32 who intends to export covered electronic waste to a foreign
33 destination shall comply with all of the following at least 60 days
34 prior to export:

35 (a) Notify the department of the destination, contents, and
36 volume of covered electronic waste to be exported.

37 (b) Demonstrate that the importation of covered electronic
38 waste is not prohibited by any applicable law or regulation of the
39 country of destination and that any import is conducted in
40 accordance with all applicable laws. As part of this demonstration,

required import and operating licenses shall be forwarded to the department.

(c) Demonstrate that the exportation of covered electronic waste is conducted only in accordance with applicable international law, *including any treaty agreed to by either the United States or the country of destination.*

(d) Demonstrate that the management of the exported covered electronic waste will be handled within the country of destination in accordance with applicable rules, standards, and ~~requirements~~ *guidelines* adopted by the Organization for Economic Co-operation and Development for the environmentally sound management of electronic waste.

(e) Demonstrate that the covered electronic waste is being exported for the purpose of reuse or recycling.

SEC. 9. Section 42476.6 of the Public Resources Code is amended to read:

42476.6. Section 42476.5 does not apply to a *demanufactured or processed* component part of a covered electronic device that is exported ~~to~~ by an authorized collector or recycler and that is *directly reused or recycled into* in a new electronic component.

SEC. 10. Section 42477 of the Public Resources Code is amended to read:

42477. On July 1, 2004, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the *average* net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state. The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

SEC. 11. Section 42478 of the Public Resources Code is amended to read:

42478. On July 1, 2004, and on July 1 every two years thereafter, the board, in collaboration with the department shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover *the average net cost* for an electronic waste ~~recycler~~ *recycler's net cost* to receive, process, and recycle a covered electronic device from

1 an authorized collector. The board shall make the electronic waste
2 recycling payments to a covered electronic waste recycler
3 pursuant to this article.

4 *SEC. 12. No reimbursement is required by this act pursuant*
5 *to Section 6 of Article XIII B of the California Constitution*
6 *because the only costs that may be incurred by a local agency or*
7 *school district will be incurred because this act creates a new crime*
8 *or infraction, eliminates a crime or infraction, or changes the*
9 *penalty for a crime or infraction, within the meaning of Section*
10 *17556 of the Government Code, or changes the definition of a*
11 *crime within the meaning of Section 6 of Article XIII B of the*
12 *California Constitution.*~~following:~~

13 ~~(1) The California Safe Drinking Water Act establishes a~~
14 ~~statutory framework for the regulation of the quality of ‘tap water’~~
15 ~~in the state through drinking water quality standards, requirements~~
16 ~~for consumer reporting of drinking water quality, and regulatory~~
17 ~~oversight by the State Department of Health Services.~~

18 ~~(2) Because bottled water and vended water products are~~
19 ~~regulated as food products rather than drinking water, many of the~~
20 ~~statutory protections for consumers contained in the California~~
21 ~~Safe Drinking Water Act that apply to tap water provided by public~~
22 ~~water systems do not apply to bottled water products, creating a~~
23 ~~lack of consumer certainty as to the contents of bottled water~~
24 ~~products.~~

25 ~~(3) The general public perception is that bottled water and~~
26 ~~vended water products are safer, or are of higher quality, than tap~~
27 ~~water. However, the water quality requirements for bottled water~~
28 ~~are, in many cases, less stringent than tap water.~~

29 ~~(4) Bottled water products are not subject to water quality~~
30 ~~“right to know” consumer reporting requirements such as~~
31 ~~consumer confidence report requirements, resulting in a lack of~~
32 ~~reliable and credible information for consumers concerning the~~
33 ~~contents of bottled water and vended water products.~~

34 ~~(5) The existing levels of fees for the bottled water regulatory~~
35 ~~program are not sufficient to fund oversight of bottled water and~~
36 ~~vended water products when compared to funding that is generated~~
37 ~~by drinking water program regulatory fees paid by public water~~
38 ~~systems.~~

39 ~~(6) It is necessary to enact legislation to improve consumer~~
40 ~~protection and ensure that the consumers of bottled water are~~

1 ~~afforded the same water quality “right to know” protections and~~
2 ~~regulatory oversight of bottled water products as those established~~
3 ~~for tap water.~~

4 ~~(b) It is the intent of the Legislature to enact legislation~~
5 ~~containing a comprehensive statutory framework that would~~
6 ~~ensure that provisions similar to those in the California Safe~~
7 ~~Drinking Water Act, including, but not limited to, the following,~~
8 ~~apply to bottled water and vended water products:~~

9 ~~(1) A requirement to prepare and make available to the public~~
10 ~~an annual consumer confidence report to customers that complies~~
11 ~~with the requirements established pursuant to Section 116470 of~~
12 ~~the Health and Safety Code.~~

13 ~~(2) A requirement that bottled water facilities, water vending~~
14 ~~machines, and retail water facilities be subject to annual~~
15 ~~inspections, including, but not limited to, unannounced~~
16 ~~inspections, by the department to determine compliance with~~
17 ~~bottled water requirements.~~

18 ~~(3) An assessment of annual fees on each water bottling plant,~~
19 ~~water vending machine, water hauler, retail water provider, private~~
20 ~~water source operator, and bottled water distributor, in an amount~~
21 ~~that is sufficient to fund the department’s regulatory program for~~
22 ~~bottled water.~~

